

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CHIEFTAIN ROYALTY COMPANY,)
)
Plaintiff,) **Case 5:11-cv-00212-R**
)
)
vs.)
)
QEP ENERGY COMPANY,)
)
Defendant.)
)

QEP's RESPONSE TO SUPPLEMENTAL AUTHORITY

Plaintiff's Notice of Supplemental Authority filed February 24, 2012 (Doc. 81) attaches a recent order in *Fankhouser v. XTO Energy, Inc.*, No. CIV-07-798-L. As reflected in the order (at 1-2), that case is a certified class action covering gas sold to a single purchaser and processed in a single gas plant. The portion of the order addressing extraction of NGLs and processing costs (at 6-7) supports QEP's position that a statewide class should not be certified in *Chieftain*, because of the factual issues that must be determined on a field-by-field basis and that will vary from field-to-field, in a case involving 50 fields.

In addition, the order (at 6) distinguishes this Court's order in *Naylor Farms* regarding lease language on the ground that, in *Fankhouser*, the contracts are between affiliates, whereas in *Naylor Farms*, they were arm's-length. *Chieftain*, like *Naylor Farms*, involves arm's-length contracts.

Dated: February 28, 2012.

Respectfully submitted,

/s/ John F. Shepherd

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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2012, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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